



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0675]

RIN 1625-AA87

Security Zone; Atlantic Ocean, Kiawah Island, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for certain navigable waters of the Atlantic Ocean in the vicinity of Kiawah Island, South Carolina to prevent waterside threats and incidents for persons under the protection of the United States Secret Service. The action is necessary to protect an official party, public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents or other events of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Charleston, or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 6 p.m. on August 17, 2022. For the purposes of enforcement, actual notice will be used from 3 p.m. on August 10, 2022 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0675 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Thomas Welker, Sector Charleston, Waterways Management Division, U.S. Coast Guard; telephone 843-740-3186, email Thomas.J.Welker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because local authorities asked the Coast Guard to establish the security zone within 3 days of the request. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. Immediate action is needed to prevent vessels from approaching the location in Kiawah Island, SC of persons under the protection of the United States Secret Service (USSS protectees). It is impracticable to publish an NPRM because we must establish this security zone by August 10, 2022. It would be contrary to public interest to postpone establishing the temporary security zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Delaying the effective date of this rule would be impracticable because immediate action is needed to prevent interference with the USSS protectees visit to Kiawah Island, SC.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) Charleston has determined that the USSS protectees visit from August 10, 2022, to August 17, 2022, presents a potential target for terrorist attack, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This security zone is necessary to protect the official party, public, and surrounding waterways adjacent to the visit site in Kiawah Island, South Carolina.

IV. Discussion of the Rule

This rule establishes a security zone from 3 p.m. on August 10, 2022, through 6 p.m. on August 17, 2022. The security zone will cover all navigable waters of the Atlantic Ocean extending 1 mile seaward from the shoreline, into the Atlantic Ocean beginning at 32° 36'15.9" N, 080° 3'53.3" W, proceeding easterly along the shoreline to 32° 36'26.6" N, 080° 2'51.9" W.

The duration of the zone is intended ensure the security of the USSS protectees during the scheduled event. No vessel or person will be permitted to enter, transit through, anchor in or remain within the security zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the security zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

The Coast Guard will provide notice of the security zone by Broadcast Notice to Mariners, or by on-scene designated representatives. And if during this period, the USSS protectees have left the area and the COTP no longer sees a need to enforce the security

zone, the COPT will issue a general permission to enter via a Broadcast Notice to Mariners. This would indicate that the zone will no longer be subject to enforcement.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The security zone is limited in size and location as it will cover 1 square mile of the Atlantic Ocean in the vicinity of Kiawah Island, South Carolina. Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the security zone without authorization from the COTP Charleston or a designated representative, they may operate in the surrounding area during the enforcement period. Furthermore, the rule will allow vessels to seek permission to enter the zone. Persons and vessels may still enter, transit through, anchor in, or remain within the security zone during the enforcement period if authorized by the Captain of the Port Charleston or a designated representative. The Coast Guard will provide advance notification of the security zone via a Broadcast Notice to Mariners, allowing mariners to make alternative plans or seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires

Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary security zone enforced continuously for a period of 8 days, unless canceled

earlier by the COTP, which will prohibit entry to a portion of the Atlantic Ocean adjacent to Kiawah Island, South Carolina. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T07-0675 to read as follows:

§ 165.T07-0675 Security Zone; Kiawah Island, SC.

(a) *Location.* The following area is a security zone: All waters of the Atlantic Ocean extending 1 mile seaward from the shoreline, into the Atlantic Ocean beginning at 32° 36'15.9" N, 080° 3'53.3" W, proceeding easterly along the shoreline to 32° 36'26.6" N, 080° 2'51.9" W. These coordinates are based on the 1984 World Geodetic System

(WGS 84).

(b) *Definitions.* The term “designated representative” means Coast Guard Patrol Commanders, including coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the security zone described in paragraph (a) of this section unless authorized by the COTP Miami or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP Miami or designated representative.

(2) Persons who must notify or request authorization from the COTP Charleston may do so by Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(d) *Enforcement period.* This rule will be enforced from 3 p.m. on August 10, 2022, through 6 p.m. on August 17, 2022. If the COTP no longer sees a need to enforce the security zone, the COPT will issue a general permission to enter via a Broadcast Notice to Mariners to indicate that the zone will no longer be subject to enforcement. .

Dated: August 09, 2022.

J. D. Cole,
Captain, U.S. Coast Guard,
Captain of the Port Charleston.

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